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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,847	03/29/2004	Yutaka Kimura	427-89	9114
23117	7590	11/21/2005	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				SHAW, CLIFFORD C
		ART UNIT		PAPER NUMBER
		1725		

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/810,847	KIMURA ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Clifford C. Shaw	1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2 and 5-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 9 and 10 is/are allowed.  
 6) Claim(s) 1,2 and 5 is/are rejected.  
 7) Claim(s) 6-8 and 11-15 is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 3/29/2004 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**Detailed Action**

1.) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.) Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by either one of Lai et al. (5,306,358) or Espy (3,066,215). Either one of Lai et al. (5,306,358) or Espy (3,066,215) discloses a welding shield gas with the composition claimed (see the abstract of Lai et al. (5,306,358) and see column 4, lines 29-45 of Espy (3,066,215)). Applicant is to note that the intended use of his shielding gas to weld a particular material does not impose any limitation that would distinguish over the references.

3.) Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Clark et al. (4,903,888). In the patent to Clark et al. (4,903,888) at column 8, table II, a shielding gas is disclosed comprised of 50% Argon and 50% Helium, falling with the gas composition component ranges claimed by applicant. Applicant is to note that the intended use of his shielding gas to weld a particular material does not impose any limitation that would distinguish over the reference.

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4.) Claims 6-8 and 11-15 are objected to for depending from rejected claims, but would be given favorable consideration if recast in independent form to include all of the limitations of the parent claims. Claim 6 is written in a form that includes the subject matter of claim 1. Claim 6 would be given favorable consideration if recast in an independent form to explicitly recite the subject matter of claim 1, especially the welding material comprising austenitic stainless steel with a Ca concentration not less than 1 wt.ppm, and the particular shield gas composition set forth. The other claims would be given favorable consideration at least because they depend from claim 6.

5.) Claims 9 and 10 are allowable over the prior art of record. None of the prior art of record teaches or suggests the welding method claimed wherein austenitic stainless steel is welded with a non-consumable electrode using the particular shield gas, in the manner set forth in claim 9. It is noted that the shield gas composition set forth in the claim comprises “an inert gas, nitrogen gas, and helium gas ...”. The language “inert gas” is interpreted to mean any inert gas other than helium. Claim 10 is allowable at least because it depends from claim 9.

6.) Applicant's arguments filed 9/21/2005 have been fully considered but they are not persuasive. Claims 1, 2, and 5 are considered unpatentable for the reasons set forth above.

7.) Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Clifford C Shaw at telephone number 571-272-1182. The examiner can normally be reached on Monday through Friday of the first week of the pay period and on Tuesday through Friday of the second week of the pay period.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas G. Dunn, can be reached at 571-272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Clifford C Shaw  
Primary Examiner  
Art Unit 1725

November 17, 2005